

June 30, 2003

Docket Management Systems
US Department of Transportation
400 Seventh Street, SW., Room 401
Washington, DC 20590-0001

Docket #'s TSA-2003-14610
FMSCA-2001-11117

To Whom It May Concern:

The State of New Jersey Motor Vehicle Commission as our state's chief credentialing authority for Hazmat operators would like to submit the following comments and qualifications relating to the above-mentioned docket numbers. We appreciate the opportunity to provide our input and assistance on the regulatory implementation of the US Patriot Act of 2001. We duly recognize the security issues involved and the need for adequate security checks for hazardous materials endorsement holders. However, though we support the overall goal, there are some issues and questions regarding implementation.

First, it must be noted the rule indicates that by November 3, 2003, no state may issue, renew or transfer a hazardous material endorsement for a CDL unless the state receives a no security threat notification from the Transportation Security Administration. Also, states would be required to notify CDL hazardous materials applicants of the new requirements 180 days prior to license expiration date. Further, the rule seems to suggest each applicant may be able to initiate the TSA Security Threat Assessment.

It must be noted for states to be in full compliance, a notification process must commence immediately in order to meet the required timelines. However, there are some practical procedural concerns and unanswered process questions which could preclude timely implementation. Currently, New Jersey's fingerprint check program is administered by a state contract vendor. NJ State Police will be submitting comment clarifying our current electronic scan process.

Under 1572.5 the states are required to forward the Hazmat application to TSA in a form and manner to be determined. From a reading of the rule, it seems to indicate a part of the application process fingerprint cards will be submitted. As part of the prescribed application package, these cards would also be forwarded and the FBI would conduct a criminal background check as part of the overall TSA Security Assessment. Then as part of their overall security assessment, TSA would determine fitness to hold a Hazmat endorsement.

At the outset, these provisions do not consider different state criminal background check and application processes. In New Jersey, as a condition of licensure, applicants must undergo an electronic fingerprint scan by the state's private contract vendor. As a result, most, if not all, local police departments have neither the resources nor the capability to provide traditional fingerprint cards to individuals. The ultimate repository and results transmitting agency is now the state police. Therefore, New Jersey requires some qualification that our current process fits within TSA guidelines and the state police can coordinate criminal background check processes between our state and the Office of Homeland Security

Second, we have practical timing issues. The 180-day timeline for notification already lapsed. It is our intention to commence the notification process for our operators as soon as possible. However, the magnitude of the task may make it impossible to do so prior to August 1, 2003. If that is the case, a provision should be added to protect the drivers who miss deadlines through no fault of their own.

Third, following rule publication TSA is to begin conducting Security Threat Assessments for Hazmat endorsement holders using data contained in the Commercial Driver's License Information System. From this, TSA will facilitate a background check and develop both a preliminary and final threat assessment for each applicable commercial operator. If TSA determines an operator does not meet the threat level standards, the licensing state must disqualify the operator from holding a Hazmat endorsement. However, the rule is silent on the exact method of notification. Will it be electronic or manual? Also, we need confirmation on our assessment that any appeals are totally under the purview of TSA and states will simply revoke a Hazmat endorsement upon notification by TSA with no discretion.

Fourth, Section 1572.5 provisions state that each Hazmat operator must pass a security threat assessment before a Hazmat endorsement can be issued or renewed. This provision is silent on the method TSA will use to notify each state. How will the threat level assessment be provided to the state and what information becomes part of the permanent state record.

Fifth, provisions in the rule require an expansion of the application to include not only personal individual information, but a listing of the disqualifying offenses, alien registration number, and military history, a privacy statement and expanded certification that the candidate understands the requirements penalties and has an obligation to report any conviction on disqualifying offense. States would then be required to forward the

application and presumably the fingerprint cards to TSA. In our state the fingerprint data would be coming from the state police while the application would come from the Motor Vehicle Commission. The TSA should allow states the option of submitting information electronically to ease the administrative burden on the licensing agency. Moreover, as stated above, it is unlikely that New Jersey will have the capability of submitting fingerprint data by any other means at all.

Finally, provisions in the rule require states to indicate on CDLIS: whether the applicant is a U.S. Citizen, the alien registration number and an indication as to the operator's security risk status. Currently, no data fields exist on CDLIS to enter this information. How will the system be modified to accommodate this information?

Thank you for the opportunity to respond to this interim final rule.

Sincerely,

Donald Borowski, Director
Driver Control & Regulatory Affairs
NJ Division of Motor Vehicles